IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.183 of 2007
With
Civil Application No.1471 of 2006

Shri Sadashiv Deorao Deshmukh Appellant

Vs.

Anjanabai Sahebrao Kale & ors. Respondents

Mr.Dilip Bodake for appellant.
Mr.Amit Borkar for resp.no.3.

CORAM: B.H.MARLAPALLE, J.

June 19, 2007.

P.C.

1. Heard Mr.Bodake, the learned counsel for the appellant - original defendant no.1. Regular Civil Suit No.55 of 1985 was filed by two sisters i.e. Anjanabai and Lochanabai for possession as of right of ownership and mesne profits over the suit land i.e. agricultural land located in Gat No.502 (new Gat No.344) admeasuring 5 H. and 16 R. It was alleged that the father of Defendant nos.1, 2, 3 and 5 and the husband of defendant no.4 Shri Deorao Deshmukh had no concern with the suit land and behind the back of the plaintiffs he manipulated the records in collusion with the Revenue officials and got his name mutated in the cultivation column of the 7/12

extract.It was further claimed that the plaintiffs' late mother Pramilabai had never extended any right of cultivation in favour of Deorao Deshmukh nor had she created any interest in his favour. The plaintiffs had pointed out that on the demise of Rajaram Deshmukh, the suit property came to the ownership of Pramilabai, the mother who executed a Will 18/9/1971 and divested the suit land to original plaintiff no.1. It is also not disputed that original defendant no.6 was Ganpat Hanuman Ghadge and during the pendency of the suit both the plaintiffs died. Defendant No.6 thereafter made an application praying for being transposed as the plaintiff on the basis of the Will dated 10/8/1992 made in his favour by both the plaintiffs i.e. Anjanabai and Lochanabai. By the said Will the suit property was divested in his favour.

2. In response to the summons issued by the trial Court, defendant no.5 did not appear whereas defendant no.2 appeared but did not file W.S. As per the order dated 17/2/1993 the suit was directed to proceed ex-parte against the defendant no.5 and without W.S. against defendant no.2. Defendant nos.1, 3 and 4 filed their W.S. at Exhibit 27 and

admitted the ownership of plaintiff no.1 over the suit land but at the same time they denied the allegation that they got the possession of the suit land forcibly. They also denied the plaintiffs' case that they had asked for possession of the land in May 1992 along with mesne profits. They further claimed that Pramilabai was the cousin aunt of Deorao Deshmukh and as she had no help to cultivate the land, she had handed over the same for cultivation to Deorao Deshmukh and in this fashion they remained in possession for more than 12 years. The defendants, therefore, claimed the ownership by adverse possession.

3. After the defendant no.6 was transposed as the plaintiff in place of the original plaintiffs and on their demise, he stepped in the witness box and also examined Shri Vasant Chavare, an attesting witness of the Wills at Exhibits 93 and 94 made in his favour by the original plaintiffs. On examination of the evidence the trial Court held that the plaintiffs could not prove the Will dated 18/9/1971 but they had proved that they were the owners of the suit land through their mother Pramilabai. The trial Court further held that the plaintiffs had proved their

case against Deorao and he in collusion with the Revenue officials had entered his name in the cultivation column of the suit land and that he was the trespasser and was in unlawful possession of the suit land. The trial Court also held that the suit was within limitation and the plaintiffs were entitled for possession of the suit land from the defendants.

4. The lower Appellate Court while dismissing the appeal has concurred with the findings recorded by the trial Court.

5. The 7/12 extracts at Exhibits 99 and 100 showed that in the year 1970-71 the suit land was under the cultivation of Ganpat whereas in the subsequent year the cultivation column for the year 1971-72 was blank and 1972-73 onwards the name of Deorao Deshmukh is entered in the cultivation column at Exhibit 99. On the demise of Deorao the name of Sadashiv was entered in the cultivation column of the 7/12 extract. The defendants did not enter the witness box. The plaintiffs' witnesses were not cross-examined by their Advocate and he filed a pursis of no instructions. Even then before the

lower Appellate Court no application was made for leading additional evidence either to disprove the Wills at Exhibits 93 and 94 or the 7/12 extracts for the year 1970-71 and 1971-72. The lower Appellate Court, therefore, agreed with the findings of the trial Court that the original plaintiffs had succeeded their mother Pramilabai and they had executed the Will deeds at Exhibits 93 and 94 in favour of the original defendant no.6 and the substituted plaintiff. The evidence before the trial Court also indicated that till the year 1972 the original plaintiffs were cultivating the land through the original defendant no.6 and only in the year 1973 the father of the defendants in collusion with the village Talathi got his name mutated in the cultivation column of 7/12 extract and after his name was mutated in the 7/12 extract, he obtained possession of the suit land forcibly. The defendants did not adduce any evidence in support of their case made out in W.S. at Exhibit 27.

6. This fact finding exercise made by both the Courts below regarding the ownership of the original plaintiffs, the Will deeds executed by them in favour of the substituted plaintiff and the illegal

possession of Deorao over the suit land is based on the oral and documentary evidence and this Second Appeal does not raise any substantial question of law for the consideration of this Court.

7. Hence the appeal must fail at the threshold and the same is hereby dismissed in limine.

8. Civil application does not survive and the same stands disposed off.

(B.H.MARL